IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12717 of 2007
With
SPECIAL CIVIL APPLICATION No. 12718 of 2007
With
SPECIAL CIVIL APPLICATION No. 12719 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

ARVINDKUMAR S JOSHI - Petitioner(s)
Versus
GIRDHARILAL S RAMCHANDANI & 16 - Respondent(s)

==========

Appearance :
MR JV JAPEE for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 17.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/05/2007

COMMON ORAL JUDGMENT

1. As in all the three petitions, common question of law and facts arise, as well as filed by the common petitioner, they are being disposed of by this common order.

In Special Civil Application No. 12717 of 2007, the petitioner has prayed for an appropriate order for quashing and setting aside the order passed by the Revisional Authority in Revision Application No. 49 of 2006.

In Special Civil Application No. 12718 of 2007, the petitioner has prayed for an appropriate order for quashing and setting aside the order passed by the Revisional Authority in Revision Application No. 48 of 2006.

In Special Civil Application No. 12717 of 2007, the petitioner has prayed for an appropriate order for quashing and setting aside the order passed by the Revisional Authority in Revision Application No. 44 of 2006.

2. In all the petitions, the petitioner has

challenged the aforesaid orders passed by the Deputy Secretary, State Government in Revisional jurisdiction whereby the order passed by the Collector, Banaskantha dated 21.10.2005 in MUN/Appeal No. 2 of 1994 came to be set aside.

3. It is the contention on behalf of the petitioner that opportunity of hearing has not been given to the petitioner and that no notice has been given to the petitioner.

4. It is required to be noted that in the impugned order passed by the Deputy Secretary, it has been specifically mentioned that opportunity of hearing was given to the opponents therein but they have not made any representation. It is required to be noted that a similar order passed by the Deputy Secretary in its revisional jurisdiction, whereby the very order passed by the Collector, Banaskantha in Appeal No. 2 of 1994 was set aside, Special Civil Application No. 26747 of 2006 was filed and in the said order also similar recital was there that opportunity was given to the opponents but they have not made any representation. When the said order was

challenged making a grievance that opportunity was not given, learned Single Judge of this Court (Coram : Jayant Patel, J) vide its order dated 22.12.2006 has dismissed the said Special Civil Application confirming the similar order passed by the Deputy Secretary, however, in another Revision Application but challenging the very order passed by the Collector, Banaskantha in Appeal No. 2 of 1994. Learned Single Judge while confirming the aforesaid Special Civil Application has considered the fact that the petitioner together with the members of the Municipality when the resolution was passed, at that time they did not raise any objection and considering the same, learned Single Judge dismissed the said Special Civil Application.

5. Under the circumstances, considering the order dated 22.12.2006 passed by the learned Single Judge in Special Civil Application No. 26747 of 2006, and for the reasons stated therein and also on the ground that when the petitioner himself was member of the Municipality when the resolution was passed and at that time they did not raise any objection, subsequently he could not have challenged the very

resolution which was earlier not objected to. With these, present Special Civil Applications are required to be dismissed and are accordingly dismissed.

[M.R.Shah, J.]

satish